

FINAL APPROVED

**THE VIRGINIA BOARD OF MEDICINE
MINUTES
JUNE 6, 2002**

The Virginia Board of Medicine met on June 6, 2002, at 8:00 a.m., at the Department of Health Professions (“DHP”), 6606 West Broad Street, Richmond, Virginia. J. Kirkwood Allen, Vice President, called the meeting to order. Mr. Allen declared a quorum.

MEMBERS PRESENT:

J. Kirkwood Allen, Vice President
Brian R. Wright, DPM, Secretary/Treasurer
Diane Reynolds-Cane, MD, Incoming Secretary/Treasurer
Robert J. Bettini, MD
Carol Comstock, RN, Citizen Member
Cheryl Jordan, MD
Joseph A. Leming, MD
Gary P. Miller, MD
Richard M. Newton, MD
Robert P. Nirschl, MD
Sue Ellen B. Rocovich, DO
Cedric B. Rucker, Citizen Member
Clarke Russ, MD
Kenneth J. Walker, MD
Jerry R. Willis, DC

MEMBERS ABSENT:

Harry C. Beaver, MD, President
James F. Allen, MD

STAFF PRESENT:

William L. Harp, MD, Executive Director
Ola Powers, Deputy Executive Director, Licensure
Karen Perrine, Deputy Executive Director, Discipline
Kate Nusbisich, Deputy Executive Director, Physician Profile
Robert Nebiker, Director, DHP
Mark Monson, Deputy Director for Administration
Deborah A. Ordiway, Recording Secretary

OTHERS PRESENT:

Roscoe Roberts, Assistant Attorney General
Elaine Yeatts, DHP Senior Regulatory Analyst

FINAL APPROVED

GUESTS PRESENT: Annette Ernst, OT, chair, Advisory Board on Occupational Therapy; William R. Ward, RRT, chair, Advisory Board on Respiratory Care; Robert McCombs, Eastern Virginia Medical School; Paul Spector, DO, president-elect, Virginia Osteopathic Medical Association; Douglas Rowe, MD; M. Abey Albert, MD, Commonwealth Anesthesia; James L. Ware, MD; Michael Heinzmann, Purdue Pharma; Matthew Gaaney, Purdue Pharma; Nathan Williams, MD; Isaac Wornom, MD, VCU Health System; Paul Werbin, CRNA, Virginia Association of Nurse Anesthetists; Joyce Hawkins, VSRT; Paul Rein, DO; David Dick, CRNA; Pat Clougherty, MD and John Zinsser, MD

INTRODUCTION OF GUESTS

Mr. Allen welcomed the invited guests.

ADOPTION OF AGENDA

Dr. Leming moved to adopt the amended agenda. The motion was seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

James L. Ware, MD, expressed his concerns on the draft regulations for office-based anesthesia.

Douglas Rowe, MD, stated the regulations are a bit redundant with regard to certified facilities. All plastic surgeons who are board certified members of the AFPS are required as of July 1 to be certified by one of the three nationally certifying groups.

Nathan Williams, MD, spoke in support of the work that CRNAs do. He stated that many rural hospitals in Virginia are not able to recruit anesthesiologists and that CRNAs very successfully operate in these rural hospitals.

Isaac Wornom, MD, stated that all of the office surgery he has done has been in accredited facilities. He congratulated the advisory committee for the work they have done on this issue. He had a problem with the requirements for CME for the supervising physician. The CRNAs are excellent professionals. CRNAs have to do CME in this area. Adding CMEs to the supervising physician would not add anything to public safety.

FINAL APPROVED

Paul Werbin, CRNA, Virginia Association of Nurse Anesthetists, stated the rules are very good. Mr. Werbin had a concern with the CME requirement wherein he stated it was vague and does not add anything to public safety and is unnecessary and was not recommended by the advisory committee.

APPROVAL OF MINUTES OF FEBRUARY 7, 2002

Dr. Leming moved to approve the minutes of the Board, dated February 7, 2002. The motion was seconded and carried unanimously.

REPORTS OF OFFICERS AND EXECUTIVE DIRECTOR

President – Harry C. Beaver, MD

Dr. Harp presented Dr. Beaver's report. Dr. Beaver was unable to attend the meeting due to the death of his mother-in-law.

Dr. Harp thanked Dr. Wright for his service as secretary/treasurer and welcomed Dr. Cane as the new secretary/treasurer. Dr. Harp also announced that Dr. Cane has been appointed by the President of the Federation of State Medical Boards to the special committee to evaluate the Federation's elected leadership structure.

Dr. Harp asked the members if they were in favor of having a workshop in the near future. Dr. Leming stated he is in favor of the board getting together in an informal setting and having general discussions, but is not in favor of the board making decisions absent public input.

Dr. Russ suggested that the chair form a committee to decide where and when to have a workshop.

Vice President – J. Kirkwood Allen

No report.

Executive Director

Dr. Harp stated that the board is in good financial status.

FINAL APPROVED

Dr. Harp stated that the laptops will be purchased and the initial outlay for the laptops and software will be approximately \$75,000. This system will require in-house scanning of documents and in-house burning of CDs. Dr. Leming stated the focus of the workshop should be on computer training.

Dr. Russ addressed the issue of limited manpower from the Attorney General's office and he sought Mr. Nebiker's assistance in addressing this issue. Dr. Leming stated the board needs counsel to conduct its business. If the board is in good financial condition, the board needs to explore obtaining private counsel.

Secretary/Treasurer - Brian R. Wright, DPM

No report.

Incoming Secretary/Treasurer – Dianne Reynolds-Cane, MD

No report.

COMMITTEE REPORTS

Executive Committee - Dr. Beaver

Dr. Leming moved to accept the minutes of the Executive Committee dated April 5, 2002. The motion was seconded and carried unanimously.

Legislative Committee - Mr. Allen

Mr. Rucker moved to accept the minutes of the Legislative Committee dated May 17, 2002. The motion was seconded and carried unanimously.

Credentials Committee - Dr. Jordan

Mr. Rucker moved to accept the minutes of the Credentials Committee dated February 7, 2002 and April 5, 2002. The motion was seconded and carried unanimously.

Advisory Committee on Physician Assistants - Dr. Leming

Mr. Rucker moved to accept the minutes of the Advisory Committee on Physician Assistants dated May 10, 2002. The motion was seconded and carried unanimously.

FINAL APPROVED

Advisory Board on Occupational Therapy - Annette Ernst, OT

Dr. Wright moved to accept the minutes of the Advisory Board on Occupational Therapy dated May 9, 2002. The motion was seconded and carried unanimously.

Advisory Board on Respiratory Care - William D. Ward, RRT

Dr. Willis moved to accept the minutes of the Advisory Board on Respiratory Care dated May 9, 2002. The motion was seconded and carried unanimously.

Advisory Committee on Acupuncture - Dr. Willis

Dr. Willis moved to accept the minutes of the Advisory Committee on Acupuncture dated May 8, 2002. The motion was seconded and carried unanimously.

Advisory Committee on Radiologic Technologists - Dr. Wright

Mr. Rucker moved to accept the minutes of the Advisory Committee on Radiologic Technologists dated May 9, 2002. The motion was seconded and carried unanimously.

Advisory Board on Athletic Training – Dr. Harp

Mr. Rucker moved to accept the minutes of the Advisory Board on Athletic Training dated May 10, 2002. The motion was seconded and carried unanimously.

Committee of the Joint Boards of Medicine and Nursing - Dr. Bettini

There was no meeting for the Committee of the Joint Boards of Medicine and Nursing.

OTHER REPORTS

Board of Health Professions - Dr. Willis

Mr. Nebiker stated that an audit found no material weaknesses in the department. The board received a report on a study being conducted by Department of Professional and Occupational Regulation on the work of aestheticians, who are people who engage in dermabrasions,

FINAL APPROVED

chemical peels and some other activities that do seem to have some consequences should they be performed inappropriately. Dr. Harp will be a liaison for this study.

The Board of Health Professions is going to consider a proposal for the possibility of the boards within the Department of Health Professions to issue a letter of concern.

Assistant Attorney General – Roscoe Roberts, AAG

Mr. Roberts stated that Judge Williams sustained the decision of the board on Dr. Zamzam. Mr. Roberts reported that Mr. Faison filed a lawsuit in the Norfolk Circuit Court seeking all of the investigative records and reports relative to the death of his wife. The Norfolk Circuit Court upheld our position that Section 54.1-2400.2 precluded the release of confidential information. Mr. Faison took the matter to federal court. The court categorized his suit as removal action from state court and held that the federal court had no jurisdiction to decide Virginia law and remanded the matter to the Norfolk Circuit Court.

Mr. Roberts stated that there is an absolute right on the part of the licensee to have the case heard involving his license in the jurisdiction where he resides and conducts his business. Section 8.01-261 defines venue.

Department of Health Professions – Mr. Nebiker

Mr. Nebiker introduced Mark Monson as the new deputy director of administration.

Dr. Leming asked Mr. Nebiker if the department has enough maximum employment level (MEL) to discharge its duties. Mr. Nebiker stated that he adopted directive 4.6, which sets standards for the adjudication of cases within the department. JLARC recommended the standard for case resolution not to exceed a year. The standards should help the agency determine if additional staff is needed.

Dr. Russ asked that the case standard report be given with a timeline indicated on the document.

Dr. Russ moved that the disciplinary schedule be posted on the Board of Medicine's website listing the person's name, license number, date and time and place of the hearing, and list what type of hearing it is absent the statement of particulars. The motion was seconded.

Dr. Leming moved to table the issue. The motion was seconded and carried, with Ms. Comstock opposed.

FINAL APPROVED

Mr. Nebiker stated that a Notice of Intended Regulatory Action on the Regulations Governing the Prescription Monitoring Program was published. This program requires the Department of Health Professions to set up a database for all Schedule II drugs that are prescribed in health planning region three. Region three is the southwestern part of Virginia, which encompasses 25% of the state. Upon implementation of this program all Schedule II prescriptions that are dispensed in pharmacies will be transmitted electronically through a database maintained by the department. The database will be accessible to a very limited number of people on an investigation specific basis. The database will be available to physicians for their patients on a recipient given basis where the physician has obtained consent from the patient to obtain such records. No licensing funds or general funds are being used for this program. The Department of Justice announced the availability of federal grants for prescription drug monitoring programs being implemented by the state. The grant is due on July 12th and the department is putting together the paperwork for this grant.

Podiatry Report - Dr. Wright

No report. Dr. Harp thanked Dr. Daniel S. Schustek for serving on the ad hoc committee for office-based anesthesia. The Virginia Podiatric Association has been working on an alternative pathway for podiatric radiologic technologist-limiteds. Dr. Arnold Beresh is working in concert with another gentleman who has a board-approved course and examination for the radiologic technologists-limited.

Chiropractic Report - Dr. Willis

No report.

NEW BUSINESS

The Board agreed to amend the agenda and consider that portion of item two concerning "Adoption of Proposed Regulations - office-based anesthesia" as the first item of new business.

ADOPTION OF PROPOSED REGULATIONS ON OFFICE-BASED ANESTHESIA

Ms. Yeatts thanked Dr. Rein, Mr. Dick, Dr. Clougherty and Dr. Zinsser for their work on the regulations on office-based anesthesia. In December 1999, the Board received a petition for rulemaking from the Medical Society of Virginia requesting the promulgation of regulation for office-based anesthesia. The NOIRA had been published and the comment period concluded. House Bill 213 was introduced in the 2002 General Assembly requiring the Board of Medicine to promulgate regulations. Once permission is granted to publish the proposed regulations there

FINAL APPROVED

will be a 60-day comment period and a public hearing on the proposed regulations. The final regulation must be in place on January 17, 2003.

Dr. Leming moved to table the issue of who the regulations may be applied to and proceed with working on this document as a minimum standard of care as relates to the delivery of office-based anesthesia by a practitioner licensed by the Board of Medicine. Dr. Harp stated the regulations are to apply to every licensee of the Board of Medicine. Dr. Leming withdrew his motion.

Dr. Leming proposed a substitute motion that the Board take a vote that it is the intent of the Board that these regulations be applicable to all named licensees in the regulation. The motion was seconded and carried unanimously.

18 VAC 85-20-310. Definitions. Dr. Leming moved that the definition for office-based be changed to read as follows: "Office-based" means any setting other than (1) a licensed hospital as defined in § 32.1-123 of the Code of Virginia or state-operated hospitals; or (2) a facility directly maintained or operated by the federal government." The motion was seconded and carried unanimously.

Dr. Leming made an editorial change to the definition of "local anesthesia" which would read as follows: "Local anesthesia means a transient and reversible loss of sensation in a circumscribed portion of the body produced by a local anesthetic agent."

Mr. Rucker moved to accept the amended changes to 18 VAC 85-20-310. The motion was seconded and carried unanimously.

Dr. Leming moved to change the definition of physical status classification as follows: "Physical status classification means a description of a patient used in determining the anesthetic risk as specified by the American Society of Anesthesiologist. Classifications are Class 1 for a normal healthy patient; Class 2 for a patient with mild systemic disease; Class 3 for a patient with severe systemic disease limiting activity but not incapacitation; Class 4 for a patient with incapacitating systemic disease that is a constant threat to life; and Class 5 for a moribund patient not expected to live 24 hours with or without surgery." The motion was seconded.

Dr. Leming amended his motion to read as follows: "Physical status classification means a description of a patient used in determining the physical status as specified by the American Society of Anesthesiologist. Classifications are Class 1 for a normal healthy patient; Class 2 for a patient with mild systemic disease; Class 3 for a patient with severe systemic disease limiting activity but not incapacitation; Class 4 for a patient with incapacitating systemic disease that is a

FINAL APPROVED

constant threat to life; and Class 5 for a moribund patient not expected to live 24 hours with or without surgery.” The motion was seconded and carried unanimously.

18 VAC 85-20-320. General provisions. Dr. Russ moved to approve the wording of 18 VAC 85-20-320. The motion was seconded and carried unanimously.

18 VAC 85-20-330. Qualifications of providers.

Dr. Leming moved to delete the word “physicians” in 18 VAC 85-20-330(A). This section would then read “Doctors of medicine, osteopathic or podiatry who utilize office-based anesthesia shall ensure that all medical personnel assisting in providing patient care are appropriately trained, qualified and supervised, are sufficient in numbers to provide adequate care, and maintain training in basic cardiopulmonary resuscitation.” The motion was seconded and carried, with Ms. Comstock opposed.

Dr. Bettini moved to change (B)(2) as follows: “Moderate sedation/conscious sedation may be administered by the operating doctor with the assistance of and monitoring by a licensed nurse, physician assistant or a licensed intern or resident.” The motion was seconded and carried with Dr. Russ, Dr. Wright, Dr. Cane, Mr. Wright and Ms. Comstock opposed.

Dr. Wright moved to approve (B)(1) as presented. The motion was seconded and carried with Dr. Nirschl opposed.

Dr. Wright moved to delete (B)(3). The motion was seconded and carried unanimously.

Dr. Cane moved that the doctor who provides office-based anesthesia or who supervises the administration of anesthesia should obtain four hours each biennium of continuing education hours directed to the administration of anesthesia and the doctor who administers moderate sedation or conscious sedation should obtain eight hours each biennium of continuing education hours directed to the administration of anesthesia. There was no second to this motion.

Dr. Leming moved the language for section (C)(2) as printed in the handout that stated “Any doctor who administers office-based anesthesia without the use of an anesthesiologist or certified registered nurse anesthetist shall obtain four hours of continuing education in anesthesia each biennium.” The motion was seconded and carried unanimously.

Dr. Leming moved to delete the word “training” and insert the word “certification” in section (C)(1). The motion was seconded and carried unanimously.

18 VAC 85-20-340. Procedure/anesthesia selection and patient evaluation.

FINAL APPROVED

Dr. Leming moved an amendment to (B)(1) by addition, which would read as follows: “The pre-operative anesthesia evaluation of a patient shall be performed by the health care practitioner administering the anesthesia or supervising the administration of anesthesia. It shall consist of performing an appropriate history and physical examination, determining the patient’s physical status classification, developing a plan of anesthesia care, acquainting the patient or responsible individual with the proposed plan and discussion of the risks and benefits.” The motion was seconded and carried unanimously.

Dr Leming moved that Section 340, as amended, be approved. The motion was seconded and carried unanimously.

18 VAC 85-20-350. *Informed consent.*

Dr. Wright moved to approve 18 VAC 85-20-350 as presented. The motion was seconded and carried unanimously.

18 VAC 85-20-360. *Monitoring.*

An editorial change was made to 3(B) wherein the word “anesthesia” was deleted and the word “sedation” added. This section would read, “to administer office-based moderate sedation/conscious sedation, the following equipment, supplies and pharmacological agents are required.”

Dr. Leming moved to strike in (B)(3) the words “or esophageal stethoscope.” The motion was seconded and carried unanimously.

Dr. Wright moved to approve the amended section. The motion was seconded and carried unanimously.

18 VAC 85-20-370. *Emergency and transfer protocols.*

Dr. Wright moved for approval of this section as presented. The motion was seconded and carried unanimously.

18 VAC 85-20-380. *Discharge policies and procedures.*

Mr. Rucker moved for approval of this section as presented. The motion was seconded and carried unanimously.

FINAL APPROVED

18 VAC 85-20-390. Reporting requirements.

Dr. Jordan moved for approval of this section as presented. The motion was seconded and carried unanimously.

18 VAC 85-20-310. Definitions.

Dr. Leming moved to strike the words “or Advanced Trauma Life Support (ATLS)” from the definition of advanced resuscitative techniques. The definition of *advanced resuscitative techniques* means methods learned in certification courses for Advanced Cardiopulmonary Life Support (ACLS) or Pediatric Advanced Life support (PALS). The motion was seconded and carried unanimously.

At the conclusion of the discussion of office-based anesthesia regulations, Dr. Leming moved that the remainder of the agenda be handled by consent. The Chair then asked if any Board member wishes to extract any item. Agenda items #5, 7 and 9 and the continuing education item requested by Dr. Russ were identified for extraction. The motion was seconded and carried, with Ms. Comstock opposed. She stated she was not familiar enough with the issues to forego discussion.

Item 5: Consideration of amendment to the October 11, 2001 minutes

Dr. Harp stated that the October 11, 2001 minutes were inaccurate regarding the appointment of an ad hoc committee to consider JLARC Recommendation 17 and therefore needs to be changed.

Dr. Leming moved that the repropoed language, as contained in the agenda packet, be adopted in lieu of the originally approved minutes. The motion was seconded. Dr. Bettini stated he remembered the issue being tabled. Dr. Harp stated they do not remember there being a motion for the ad hoc committee to be constituted. The motion carried with Ms. Comstock abstaining.

Item 7: Proposal for monthly disciplinary report to be posted on Board website – Ms. Perrine

Ms. Perrine stated that on a monthly basis a listing of individuals who have had board actions would be posted on the Board of Medicine’s website.

Dr. Leming moved to approve the creation of a monthly disclosure as a practitioner disciplinary action report, that it be made available on the Board of Medicine’s website, and that it have posted everything that is also contained in the Board Briefs. Ms. Perrine stated that what would

FINAL APPROVED

be reported would be a informal conference committee report that referred the case to a formal hearing and an order where the board has findings of fact and deferred conclusions of the law but asked the individual to comply with a set of terms and then come back before the board. Dr. Harp summarized the matters to be included as: any order with a violation, any order with an adverse action, restriction or continued restriction, and an IFC referral for formal hearing. Dr. Leming agreed. The motion was seconded and carried unanimously.

Item 9: Practitioner Information update – Ms. Nosbisch

Ms. Nosbisch stated that on June 3, 2002 the emergency contact letter was mailed out. It was reported that in 2001 the mailing cost was \$38,000. Right now there are three mailings to notify the physicians. First is the initial letter, after 30 days a second letter is sent and then a certified letter is mailed out. Ms. Nosbisch proposed that there only be two mailings, an initial mailing and then a certified mailing.

Dr. Leming moved that the mailing be reduced to two mailings. The motion was seconded and carried unanimously.

Dr. Bettini stated that he would like to see the practitioners who do not fill out their practitioner profile come to an IFC and be fined in order to pay for the cost. Dr. Willis was also in agreement of fining those who do not complete their physician profile.

Item #11: Discussion of considering continuing education – Dr. Russ

Dr. Russ moved that formal continuing education hour credits be given for Board of Medicine activities. The motion was seconded. Dr. Harp stated that according to the AMA guidelines service on a counsel or committee does not earn CME credit. Dr. Bettini stated credit should be given for when speakers come to our meetings and should be considered teaching. The Chair asked for a show of hands in favor of the motion. The motion failed.

Dr. Leming moved that the executive director look into the possibility of having an outside entity accredit us for our board activity. The motion was seconded and carried, with Dr. Russ and Mr. Rucker opposed.

Other Business

FINAL APPROVED

Next Regularly Scheduled Board Meeting

The Board of Medicine will meet on October 10, 2002 at the Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

Review of Cases Recommended for Closure

The Board members proceeded to review cases recommended for closure.

Adjournment

With no further business to discuss, the meeting of the Board of Medicine was adjourned.

J. Kirkwood Allen
Vice President

William L. Harp, MD
Executive Director

Deborah A. Ordiway
Recording Secretary